

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GREGORY BUONOCORE,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

No. C 08-0184 PJH

**ORDER RE PLAINTIFF'S
NOTICE OF DISMISSAL**

On January 10, 2008, plaintiff commenced this action on behalf of himself and all others similarly situated, against defendant, alleging causes of action for breach of contract, declaratory relief, violation of Bus. & Prof.Code § 17200 *et seq.* and breach of the implied covenant of good faith and fair dealing. On September 8, 2008, this case was stayed pending completion of arbitration. On April 9, 2009, plaintiff filed a Notice of Dismissal, seeking to voluntarily dismiss his individual claims, but not those of the putative class members, pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure. However, because an answer has been filed in this case, voluntary dismissal pursuant to Rule 41(a)(1)(A)(i) is improper.

Under Rule 41(a)(1)(A), a "plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared. If a plaintiff no longer has the right to voluntarily dismiss the action, Rule 41(a)(2) allows a plaintiff to dismiss the action only by court order, subject to any terms and conditions the court deems proper. Fed.R.Civ.P. 41(a)(2). Accordingly, because plaintiff's Notice of Dismissal is improper, his individual claims are not dismissed. In order for plaintiff

1 to properly dismiss his individual claims, he must comply with either Rule 41(a)(1)(A)(ii) or
2 Rule 41(a)(2). The court cautions plaintiff that if he is permitted to dismiss his individual
3 claims, the class claims will not be viable without a representative plaintiff. A case
4 management conference is set for April 30, 2009, at 2:30 p.m. to address this issue.

5 **IT IS SO ORDERED.**

6 Dated: April 13, 2009

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PHYLLIS J. HAMILTON
United States District Judge